

REMARKS

STATUS OF CLAIMS

Claims 1, 6, 10, and 11 have been amended. Claims 2, 7, 26, and 30 are canceled. No claims have been added or withdrawn. Claims 1, 3-6, 8-11, 22-23, 25, 27-29, 31-33, 36-37, 39-40, and 42-43 are currently pending in the application.

CLAIMS 6, 8-9, 25, AND 36-37—35 U.S.C. §101 ISSUE

Claims 6, 8-9, 25, and 36-37 stand rejected under 35 U.S.C. §101. The rejection is respectfully traversed.

Page 2, paragraph 2 of the Office Action refers to “electromagnetic carrier signal,” “non-functional descriptive material” and “abstract ideas.” These are distinct issues that are unrelated to one another. The Office Action does not state what part of claim 6 or the dependent claims constitutes non-functional descriptive material. The Office Action does not state **why** claim 6 recites an abstract idea or **what specific parts of the claim** are allegedly defective on this basis. As a result, the applicants have had to guess about the basis of the Office Action and respectfully submit that page 2, paragraph 2 does not set forth a *prima facie* case of unpatentability because a legally supportable rationale is completely missing.

Present claim 6 recites in part:

“A computer readable **storage** medium carrying sequences of instructions for defining a service level agreement, the sequences of instructions including **instructions which when executed by one or more processors cause the one or more processors to perform ... receiving first information defining the service level agreement**, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider and agreed to by the customer ...; **distributing the one or more tests** to one or more agents that are configured to communicate with devices that are associated with the particular network; receiving result information based on the devices or agents performing the one or more tests; and **creating and storing reporting information** that identifies one or more exceptions between the level of service that has been offered and the result information.

Thus claim 6 recites a storage medium, rather than a transmission medium such as an electromagnetic carrier signal. Claim 6 recites instructions that are executable by a processor. Claim 6 recites receiving information that defines a service level agreement having particular structure and content. Claim 6 recites transforming data, communicating data and creating and storing reporting information. Therefore, claim 6 recites statutory subject matter, does not recite an abstract idea, and does not merely claim non-functional descriptive material.

Reconsideration is respectfully requested.

CLAIMS 1, 4-6, 9-11, 22, 25, 28-29, 32-33, 36, 39, 42

Claims 1, 4-6, 9-11, 22, 25, 28-29, 32-33, 36, 39, and 42 stand rejected under 35 U.S.C. §102 as allegedly anticipated by U.S. Pat. No. 6,701,342 to Bartz et al. The rejections are respectfully traversed.

A rejection under §102 is traversed if the claims recite one or more features, elements, steps or limitations that are not found in the cited reference. Stated another way, the cited reference must teach or disclose each and every feature of the claims, arranged as in the claims. *See Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983). The claims of the present application contain features not found in the reference, and therefore the rejection is overcome.

In particular, each of the independent claims recites: “receiving first information defining the service level agreement, **wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer ...**” Thus, the first information specifies particular **tests** that a management system can perform to determine whether a specified level of service is being offered, not merely **criteria** that ought to be tested. As an example, FIG. 3C of applicants’ specification shows a definition of a “Round trip latency” test indicating that the criteria of “latency between each branch office” can be tested by sending an ICMP Echo packet with a 28-byte payload every 5 minutes.

In sharp contrast, SLAs in Bartz **merely define criteria that need to be met, not how to test the criteria**. Instead, Bartz uses a completely different approach in which tests are hard-coded into the SLA manager 100 and its database (which Bartz does not show) (Bartz col. 13, line 37). The database is said to store the results of SLO and SLA calculations (Bartz col. 13, line 58-62) but there is no indication that the SLA manager 100 **receives test definitions as part of an SLA**, as in the claimed system.

For this reason, each of the independent claims 1, 6, 10 and 11 recites subject matter not found in Bartz. Each of the dependent claims 4, 5, 9, 22, 25, 28-29, 32-33, 36, 39, and 42 depends directly or indirectly from one of claims 1, 6, 10, and 11 and therefore the dependent claims include the feature discussed above by dependency. Accordingly, each of claims 1, 4-6, 9-11, 22, 25, 28-29, 32-33, 36, 39, 42 is patentable over Bartz.

Regarding claims 4, 9, 28, and 32, the Office Action states, “However, Bartz et al fails to teach generating ... and communicating ...” Thus, the Office Action appears to **admit** that Bartz fails to teach the subject matter specifically recited in the dependent claims. Thus, the Office Action fails to make a *prima facie* case of unpatentability for claims 4, 9, 28, and 32, because the Office Action cites no part of Bartz that allegedly shows the subject matter of the claims. Further, while Bartz col. 4 lines 18-67 states that agents can be used for SLA measurement and “agents comprise tests,” nothing in that passage describes communicating interface data that **allows users to define tests for monitoring** the level of service that is being provided by the service provider. Having agents that implement tests is not the same as allowing users to **define** tests themselves. Bartz is not concerned with interfacing to external users for the purpose of defining tests. Therefore, claims 4, 9, 28, and 32 are independently allowable.

Reconsideration is respectfully requested.

#### CLAIMS 3, 8, 27, 31—BARTZ IN VIEW OF DATTATRI

Claims 3, 8, 27, and 31 stand rejected under 35 U.S.C. §103 as allegedly unpatentable over Bartz in view of Dattatri et al. The rejections are respectfully traversed.

Each of claims 3, 8, 27 and 31 depends from one of the independent claims discussed above that lacks the feature of “receiving first information defining the service level agreement, **wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer ...**” Dattatri et al. does not cure the deficiencies of Bartz with respect to this feature. Therefore, any combination of Bartz with Dattatri et al. cannot provide the complete subject matter that is recited in claims 3, 8, 27 and 31, and therefore the §103 rejection is unsupported. Reconsideration is respectfully requested.

CLAIMS 23, 37, 40, 43—BARTZ IN VIEW OF CARLEY

Claims 23, 37, 40, and 43 stand rejected under 35 U.S.C. §103 as allegedly unpatentable over Bartz in view of Carley et al. The rejections are respectfully traversed.

Each of claims 23, 37, 40, and 43 depends from one of the independent claims discussed above that lacks the feature of “receiving first information defining the service level agreement, **wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer ...**” Carley et al. does not cure the deficiencies of Bartz with respect to this feature. Therefore, any combination of Bartz with Carley et al. cannot provide the complete subject matter that is recited in claims 23, 37, 40, and 43, and therefore the §103 rejection is unsupported. Reconsideration is respectfully requested.

**CONCLUSION**

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application. For the reasons set forth above, it is respectfully submitted that all of the pending claims are now in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is most earnestly solicited.

To the extent necessary to make this reply timely filed, the Applicant petitions for an extension of time under 37 C.F.R. § 1.136. If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: June 21, 2007

/ChristopherJPalermo#42056/

Christopher J. Palermo, Reg. No. 42,056

2055 Gateway Place, Suite 550  
San Jose, California 95110-1089  
Telephone: (408) 414-1202  
Facsimile: (408) 414-1076